

Supreme Court, U.S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No.

**78 - 1166**

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA,  
on its own behalf and on behalf of its members,

DAVID W. JAMES,  
KENNETH WHITMAN,

*Appellants,*

v.

W. MICHAEL BLUMENTHAL,  
Secretary of the Treasury, et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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## JURISDICTIONAL STATEMENT

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## INDEX

	PAGE
Opinion Below .....	2
Jurisdiction .....	2
Questions Presented .....	3
Constitutional and Statutory Provisions Involved .....	4
Statement of the Case .....	5
The Questions Are Substantial .....	10
Conclusion .....	27
APPENDIX A—Opinion of the District Court .....	1a
APPENDIX B—Judgment of the District Court .....	10a
APPENDIX C—Notice of Appeal .....	11a

## TABLE OF AUTHORITIES

<i>Cases:</i>	
<i>Alexander v. United States</i> , 362 F.2d 379 (9th Cir. 1966) .....	19
<i>Amador-Gonzalez v. United States</i> , 391 F.2d 308 (5th Cir. 1968) .....	18, 19, 20
<i>Aptheker v. United States</i> , 378 U.S. 500 .....	21
<i>Blount v. Rizzi</i> , 400 U.S. 410 .....	23, 26
<i>Boyd v. United States</i> , 116 U.S. 616 .....	10, 19
<i>Brandenburg v. Ohio</i> , 395 U.S. 444 .....	8, 9, 21

	PAGE
<i>Carroll v. Presidents &amp; Commissioners of Princess Anne</i> , 393 U.S. 175 .....	25, 26
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 .....	20
<i>Corngold v. United States</i> , 367 F.2d 1 (9th Cir. 1966) .....	20
<i>Dennis v. United States</i> , 341 U.S. 494 .....	21
<i>Freedman v. Maryland</i> , 380 U.S. 51 .....	24, 25
<i>Gitlow v. Kiel</i> , 44 F.2d 227 (S.D.N.Y. 1930) .....	23
<i>Green v. United States</i> , 386 F.2d 953 (10th Cir. 1967) .....	20
<i>Healy v. James</i> , 408 U.S. 169 .....	25
<i>Hess v. Indiana</i> , 414 U.S. 105 .....	24
<i>Jones v. United States</i> , 357 U.S. 493 .....	18
<i>Katz v. United States</i> , 389 U.S. 347 .....	20
<i>Kelly v. United States</i> , 197 F.2d 162 (5th Cir. 1952) .....	20
<i>Klein v. United States</i> , 471 F.2d 847 (9th Cir. 1973) ....	19
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 .....	15
<i>Lamont v. Postmaster General</i> , 381 U.S. 301 .....	14, 15
<i>McSurely v. McClellan</i> , 553 F.2d 1277 (D.C. Cir. 1976) ( <i>en banc</i> ) .....	21
<i>Marcus v. Search Warrant</i> , 367 U.S. 717 .....	14
<i>Masses Publishing Co. v. Patten</i> , 244 F. 535 (S.D.N.Y. 1917), reversed 246 F. 24 (2d Cir. 1918) .....	22
<i>Murgia v. United States</i> , 285 F.2d 14 (9th Cir. 1967), cert. den., 866 U.S. 977 .....	10
<i>Near v. Minnesota ex rel. Olson</i> , 283 U.S. 697 .....	24
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 .....	14
<i>New York Times Co. v. United States</i> , 403 U.S. 713 .....	24

	PAGE
<i>Organization for a Better Austin v. Keefe</i> , 402 U.S. 415 .....	25
<i>Police Department v. Mosley</i> , 408 U.S. 92 .....	25
<i>Powell v. Stone</i> , 507 F.2d 93 (9th Cir. 1974) <i>rev'd on other grounds</i> , 482 U.S. 465 .....	21
<i>Procunier v. Martinez</i> , 416 U.S. 396 .....	15
<i>Quantity of Copies of Books v. Kansas</i> , 378 U.S. 209 ....	14
<i>Roaden v. Kentucky</i> , 413 U.S. 494 .....	14, 25
<i>Speiser v. Randall</i> , 357 U.S. 513 .....	25
<i>Stanford v. Texas</i> , 379 U.S. 476 .....	14, 15
<i>Terry v. Ohio</i> , 392 U.S. 1 .....	20
<i>Tinker v. Des Moines Independent Community School District</i> , 393 U.S. 503 .....	25
<i>United States ex rel Milwaukee Social Democrat Pub. Co. v. Burleson</i> , 255 U.S. 407 .....	22
<i>United States v. Diamond</i> , 471 F.2d 771 (9th Cir. 1973) .....	19
<i>United States v. Doe</i> , 472 F.2d 982 (2d Cir. 1972) .....	17
<i>United States v. Head</i> , 416 F.Supp. 840 (S.D.N.Y. 1976) .....	17, 19
<i>United States v. King</i> , 517 F.2d 350 (5th Cir. 1975) .....	16
<i>United States v. Milroy</i> , 538 F.2d 1033 (4th Cir. 1976) .....	16
<i>United States v. Poller</i> , 63 F.2d 911 (2d Cir. 1930) .....	15
<i>United States v. Ramsey</i> , 431 U.S. 606 .....	<i>passim</i>
<i>United States v. Sohnen</i> , 298 F.Supp. 51 (E.D.N.Y. 1951) .....	17, 19
<i>United States v. Swede</i> , 326 F.Supp. 533 (S.D.N.Y. 1971) .....	19
<i>United States v. Thirty-Seven Photographs</i> , 402 U.S. 363 .....	15, 21, 25, 26

	PAGE
<b><i>United States v. United States District Court, 407 U.S.</i></b>	
297 .....	14, 20
<b><i>United States v. Van Leeuwen, 397 U.S. 249</i></b> .....	16
<b><i>United States v. Wilmot, 563 F.2d 1298 (9th Cir. 1977)</i></b> .....	13
<b><i>Whitney v. California, 274 U.S. 357</i></b> .....	23
<b><i>Yates v. United States, 354 U.S. 298</i></b> .....	8
<b><i>Zweibon v. Mitchell, 516 F.2d 594 (D.C. Cir. 1975) (en banc), cert. denied 425 U.S. 944</i></b> .....	10
<b><i>Zurcher v. Stanford Daily, 436 U.S. 547</i></b> .....	14, 15, 25
 <b><i>Constitution, Statutes and Regulations:</i></b>	
<b>United States Constitution—</b>	
First Amendment .....	<i>passim</i>
Fourth Amendment .....	<i>passim</i>
<b>Statutes—</b>	
18 U.S.C. § 1717 .....	22
19 U.S.C. § 482 .....	<i>passim</i>
19 U.S.C. § 1305 .....	<i>passim</i>
28 U.S.C. § 1253 .....	2
28 U.S.C. § 2281 .....	9
28 U.S.C. § 2282 .....	2
28 U.S.C. § 2284 .....	2
The Espionage Act of 1917, 40 Stat. 217, Title 12, Sec. 2 .....	22
Act of Aug. 12, 1976, 90 Stat. 1119, Public Law 94-381 .....	2

	PAGE
<b>Rules and Regulations—</b>	
19 C.F.R. § 145.3 .....	11
Fed.R.Civ.P. 25(d) .....	1
U.S. Sup.Ct.R. 48(3) .....	1
 <b>Miscellaneous Authorities:</b>	
Chafee, <i>Free Speech in the United States</i> (1941) .....	22
82 Cong. Rec. 5487-5520 .....	23
H.R. Rep. No. 7, 71st Cong., 1st Sess. (1930) .....	22

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JURISDICTIONAL STATEMENT

The appellants, the Church of Scientology of California, David W. James and Kenneth Whitman, appeal from the judgment of the United States District Court for the Central District of California, entered on October 13, 1978, denying their motion for a preliminary injunction and dismissing the underlying action.<sup>1</sup> This statement is sub-

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<sup>1</sup> Since the commencement of the action, W. Michael Blumenthal has replaced William Simon as Secretary of the Treasury, and he is here substituted as appellee in place of Mr. Simon. See U.S. Sup. Ct. R.48(3); Fed. R.Civ.P. 25(d). The other appellees, listed here because of their number, are: Vernon D. Acree, Commis-

mitted to show that the Court has jurisdiction over the appeal and that substantial questions are presented.

#### **Opinion Below**

The opinion of the district court (App. A, pp. 1a-11a) is not yet reported.

#### **Jurisdiction**

This is an appeal from a judgment of a three-judge district court which was convened under former 28 U.S.C. §§ 2282, 2284<sup>2</sup> to consider the constitutionality of 19 U.S.C. § 1305 and other constitutional issues raised by appellees' conduct. The district court's judgment (Appendix B) was entered on October 13, 1978. A notice of appeal (Appendix C) was filed in the district court on November 8, 1978. On December 27, 1978, Mr. Justice Rehnquist extended the time within which to file a Jurisdictional Statement and docket the appeal to and including January 26, 1979. The Court has jurisdiction to hear a direct appeal from the judgment under 28 U.S.C. § 1253.

sioner of Customs; George C. Corcoran, Jr., Assistant Commissioner of Customs Investigations; Albert Bergerson, Regional Commissioner of Customs; Robert S. Baker, Regional Director of Investigations, United States Customs Service; John Brady, District Director of the United States Customs Service; Kenneth Ascheim, Agent in Charge of Los Angeles District Office of Investigations, United States Customs Service; Michael Peel, Special Agent, United States Customs Service; Larry Hoyle, Inspector, United States Customs Service.

<sup>2</sup> Sections 2282 and 2284 were repealed by the Act of August 12, 1976, Public Law 94-381, 90 Stat. 1119, but the repealing law does not apply to actions commenced before the date of its enactment. The complaint was filed on July 7, 1976.

#### **Questions Presented**

1. Whether the First and Fourth Amendments prohibit customs inspectors from reading papers and correspondence sent to the United States without obtaining a warrant upon probable cause to believe that importation of the documents would violate United States customs laws?
2. Whether the First and Fourth Amendments and 19 U.S.C. § 482 prohibit customs inspectors from reading papers and correspondence sent to the United States absent reasonable cause to suspect that importation of the documents would violate United States customs laws?
3. Whether the detention and general search of correspondence by customs agents for evidence of *any* crimes may be deemed a "border search" exempt from the Fourth Amendment requirement of a warrant issued upon probable cause?
4. Whether 19 U.S.C. § 1305 is unconstitutional for prohibiting the importation of written material merely "advocating or urging treason or forcible resistance to any law of the United States," without requiring that the proscribed written advocacy be directed to inciting or producing imminent lawless action and be likely to incite or produce such action?
5. Whether 19 U.S.C. § 1305 is unconstitutional in imposing a prior restraint upon non-obscene written advocacy without prior judicial approval and without a subsequent immediate judicial determination that the advocacy is not constitutionally protected?

### **Constitutional and Statutory Provisions Involved**

The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

19 U.S.C. §482 provides in relevant part:

#### **SEARCH OF VEHICLES AND PERSONS**

Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reason-

able cause to suspect there is merchandise which was imported contrary to law; . . .

19 U.S.C. §1305 provides in relevant part:

#### **IMMORAL ARTICLES: PROHIBITION OF IMPORTATION**

(a) All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; . . .

#### **Statement of the Case**

On July 3, 1976, two shipments of three cardboard boxes sent by air cargo from the Worldwide Church of Scientology in England to the Church of Scientology of California ("the Church") arrived at the British Airways office at Los Angeles International Airport. Michael Moore, a member of the Church went to the airport that evening to obtain the packages.

The packages were accurately marked as containing documents of no commercial value (Moore Aff., p. 2).<sup>3</sup> They each were filled with sealed envelopes of correspondence, both personal and Church-related, and internal Church memoranda, directives, financial data, legal correspondence, religious communications, articles for Church publications and information concerning the religious beliefs and activities of individual Church members (*id.*, p. 1).

On July 3, Larry Hoyle, a Customs Inspector at the Los Angeles International Airport, was requested to clear the three boxes for entry into the United States (Hoyle Aff., p. 2).<sup>4</sup> Hoyle stated in a later hearing that in accordance with "normal customs policy", he ordered Moore to open the boxes and "most" of the envelopes contained therein (Hoyle Tr. 42, 43).<sup>5</sup> Hoyle then removed documents from the envelopes and began to read them (Hoyle Tr. 43); he gave no reason for that unauthorized reading. He stated that his reading disclosed "references to the CIA, Interpol, debugging, decoding machine, sabotage and other matters . . ." which made him "[dis]satisfied with what [he] saw" (Hoyle Tr. 43, 44; Hoyle Aff., p. 5).<sup>6</sup> Hoyle and his supervisor decided that the documents should be detained and examined by a Customs Special Agent (Hoyle Aff., p. 2).

<sup>3</sup> The notation "Moore Aff." refers to an affidavit of Michael Moore dated July 8, 1976. This and other documents referred to remain part of the record before the district court. Copies will be lodged with the Court upon request.

<sup>4</sup> The notation "Hoyle Aff." refers to an affidavit of Larry Hoyle, dated July 14, 1976.

<sup>5</sup> The letters "Tr." refer to pages in the transcript of a hearing held before Judge Gray in this case on August 31, 1976.

<sup>6</sup> Moore stated that Hoyle told him: "I don't like this. I'm not going to release the shipment. I'm going to hold it" (Moore Aff. p. 3).

On July 4, 1976, Customs Special Agent Michael Peel "briefly reviewed the materials contained in the three boxes and concluded that they should be detained for further screening" (Peel Aff., p. 2).<sup>7</sup> He "transported the three boxes to Terminal Island, California, for further review and for safekeeping" (Peel Aff., p. 2).

During the next three days Peel read and re-read every document in the boxes<sup>8</sup> (Peel Tr. 55, 84) in a search for evidence of violations of 19 U.S.C. § 1305 or "other violations of the law" and "evidence of crime" (Peel Tr. 53, 54). He stated that he felt no need to obtain a warrant in order to read the documents (Peel Tr. 90-91).

Upon reviewing "all the documents" Peel concluded that none could be imported for reasons other than possible violation of 19 U.S.C. § 1305, i.e., because they "were documents of an intelligence organization that were evidence of crimes of both Internal Revenue Service tax fraud laws, possibly violations of the statutes enforced by the Federal Bureau of Investigation and other agencies" (Peel Tr. 60-61).

Additionally, four other customs officials reviewed the private documents of the Church and its members (Peel Tr. 59-61). Peel also consulted with several Assistant United States Attorneys (Peel Tr. 41). On July 7, 1976, the Bureau of Customs determined that the correspondence and other documents were outside the purview of 19 U.S.C. § 1305 and must be returned to the Church (Tr. 96-97).

<sup>7</sup> The notation "Peel Aff." refers to an affidavit of Michael Peel, dated July 15, 1976.

<sup>8</sup> A fourth box containing a mixture of full and empty envelopes was found on the loading dock of British Airways on July 5, 1976, and delivered to Peel on the following day. He placed it with the three other boxes he already had seized.

On the same day, appellants brought this action seeking the convening of a three-judge court to review the constitutionality of 19 U.S.C. § 1305, and for declaratory and injunctive relief and damages. Appellants alleged that section 1305 was unconstitutional on its face and as applied because, *inter alia*, (1) it proscribed the importation of written material abstractly advocating treason or insurrection against the United States, contrary to the standards of *Yates v. United States*, 354 U.S. 298, and *Brandenburg v. Ohio*, 395 U.S. 444; and (2) it imposed a prior restraint upon the importation of non-obscene written advocacy without prior judicial review embodied in a warrant or an immediate judicial hearing. Appellants argued that since section 1305 supplied the only colorable statutory authority for barring the importation of written material into the United States, the search and seizure of the documents was unlawful.

Appellants also urged that the search and seizure of their papers and private correspondence were unlawful under the First and Fourth Amendments and 19 U.S.C. § 482 because the customs agents had not obtained a warrant for the search of the documents and did not have probable cause to believe or even reasonable grounds to suspect that importation of the papers would violate United States customs laws. Appellants sought an order enjoining enforcement of section 1305, prohibiting the government from further copying or dissemination of the seized papers, and requiring the government to return to them all copies of the papers.

On July 9, 1976, District Judge William P. Gray issued a temporary restraining order prohibiting the appellees from making and disseminating copies or notes of the materials in the four boxes. Appellees were permitted, however, to disclose the contents of the boxes to the United States At-

torney for the Central District of California, who could make a single copy of "such material as he finds appropriate for criminal evidentiary purposes or for defense against any damage claims."<sup>9</sup>

Following an evidentiary hearing Judge Gray continued his restriction against further government dissemination of the retained materials or information derived from any of the materials in the four boxes (Hearing of August 31, 1976, pp. 113-166). The judge also certified constitutional questions arising from the government's actions under 19 U.S.C. § 1305 to a three-judge court (*id.* at pp. 116-118).

On April 24, 1978, a three-judge court was convened pursuant to 28 U.S.C. § 2281, comprised of Circuit Judge Stanley N. Barnes and District Judges Gray and Warren J. Ferguson. In an opinion dated October 13, 1978, the court rejected all of the appellants' claims and dismissed the action. While acknowledging that section 1305 on its face proscribed "mere advocacy" of unlawful actions, the district court construed the section as prohibiting the importation only of written advocacy intended or likely to incite imminent lawless action, thus incorporating the standard of *Brandenburg v. Ohio*, *supra* (App. A at 4a). The court also rejected the claim that § 1305 permitted an unconstitutional prior restraint of non-obscene First Amendment expression, holding that the "very short" delay in the instant case had not amounted to a constitutional deprivation (*Id.* at 5a).

Turning to the actual searches, the court held that Agent Hoyle's initial opening of the packages and envelopes and reading of the documents were lawful on the ground that a border search of papers and private cor-

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<sup>9</sup> On the same day, Agent Peel made one copy of certain materials in the boxes and delivered them to Assistant United States Attorney Dooley (Peel Tr. 58, 59; Peel Aff., p. 3).

respondence is reasonable *per se* even without reasonable cause to believe that the documents are not importable (*id.*, 6a). It upheld the subsequent "more intrusive" reading of the documents at Terminal Island as a legitimate border search predicated upon a "real suspicion" arising from the initial search (*id.*, 7a). It also observed that the correspondence reviewed at Terminal Island was in "plain view," as a result of the initial search and seizure at the airport (*id.*, 8a).

### The Questions Are Substantial

#### I

This is the first case ever presented to this Court in which United States customs employees, pursuant to a purported border search, have detained and read papers and private correspondence without obtaining a warrant and without having even reasonable cause to suspect that importation of the papers would violate United States customs laws. While this Court and the lower federal courts long have justified warrantless border searches for physical contraband on less than probable cause, they always have emphasized that such searches "are totally different things from a search for and seizure of a man's private books and papers," *Boyd v. United States*, 116 U.S. 616, 623; *Murgia v. United States*, 285 F.2d 14, 17 (9th Cir. 1967), cert. denied, 366 U.S. 977, and that "there is no substantial likelihood that [such] . . . searches will chill the exercise of First Amendment rights." *Zweibon v. Mitchell*, 516 F.2d 594, 631-32 n.93 (D.C. Cir. 1975) (*en banc*), cert. denied, 425 U.S. 944.

The decision of the district court below obliterated any legal distinction between border searches for physical contraband and the reading of private papers by customs

employees. If allowed to stand, the decision will signal that all written matter brought into the United States by any means other than by international mail<sup>10</sup> will be subject to reading and detention by the United States Customs Service for any reason at all, or for no reason. The chilling effect on the exercise of First Amendment rights of speech and expression would be monumental.

This case thus presents the novel and substantial question of what constitutional standards govern the authority of United States customs inspectors to read papers and private correspondence sent or brought to this country. In particular, the Court must decide whether a customs officer is free to read such papers not only without obtaining a warrant upon a showing of probable cause to believe that their importation would violate United States customs laws, but even without the reasonable cause to suspect such a potential violation of law mandated by 19 U.S.C. § 482.

The question was explicitly reserved with obvious concern in *United States v. Ramsey*, 431 U.S. 606, which sustained the warrantless border opening of mailed envelopes in a search for narcotics.<sup>11</sup> The Court found statutory authority for the warrantless search in 19 U.S.C. §482, which authorizes inspection of envelopes when an inspector "has reasonable cause to suspect there is merchandise [therein] which was imported contrary to law," and held that the customs official in fact had met the statutory stan-

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<sup>10</sup> A customs regulation prohibits customs officers from reading international mail without obtaining a warrant upon probable cause. 19 C.F.R. § 145.3.

<sup>11</sup> Indeed, in its petition for a writ of certiorari in *Ramsey*, the government took pains to advise the court that "there has been no showing in this case that customs inspectors read or censor mail." Petition at 14.

dard.<sup>12</sup> The Court noted that the reasonable cause to suspect standard of section 482 was "a practical test," which, although "less stringent" than that of probable cause, satisfied the Fourth Amendment requirement of reasonableness when applied to border searches. 431 U.S. at 612-613.

The Court emphasized that it was not dealing with a case in which customs inspectors had *read* correspondence contained in a mailed envelope or package. 431 U.S. at 618 n.8, 623-624.<sup>13</sup> It noted that applicable postal regulations "flatly prohibit, under all circumstances, the reading of [mailed] correspondence, absent a search warrant" (*id.* at 623). In the light of such provisions and practice, the Court concluded that customs inspections of envelopes to discover contraband, as in *Ramsey*, do not "impermissibly chill the exercise of free speech" (*id.* at 624). The Court found it "unnecessary to consider the constitutional reach of the First Amendment in this area in the absence of the existing statutory and regulatory protection", including the question of whether, in such absence, "the appropriate response would be to apply the full panoply of Fourth Amendment protections." *Id.*, n.18.<sup>14</sup>

The questions not reached in *Ramsey* are presented in stark and dramatic form in the instant case. Customs officials were not prohibited by a postal or other regulation

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<sup>12</sup> The inspector spotted eight bulky envelopes apparently typed on the same typewriter, all of which had been mailed from Thailand, "a known source of narcotics." He felt one of the letters and concluded that "there was something in there." He weighed it and determined that it was three to six times the weight of a normal air mail letter. The inspector then opened the envelope and discovered narcotics.

<sup>13</sup> No letters or other written material were contained in the envelopes searched in *Ramsey*.

<sup>14</sup> Justice Powell, concurring, also specifically noted and relied upon the postal regulations and practice prohibiting the reading of correspondence. 431 U.S. at 625.

from reading the correspondence and papers contained in the packages because the parcels arrived by air cargo rather than international mail.<sup>15</sup> And customs officials, upon discovering the existence of the correspondence and documents when they opened the packages, immediately proceeded to read the material without the slightest basis to believe or even suspect that their importation would violate United States customs laws.

The district court, ignoring the statutory and regulatory provisions which underlay the *Ramsey* decision, ruled that the customs inspectors properly read the correspondence. It found that the mere fact that 19 U.S.C. § 1305<sup>16</sup> makes the importation of specified categories of written matter unlawful justified the initial search of the documents, even though there was no reason to suspect a section 1305 violation. Relying on *United States v. Wilmot*, 563 F.2d 1298 (9th Cir. 1977), which involved a strip search for purposes of discovering illegal drugs, the district court held that even papers may be examined initially simply because they arrive at the border from abroad and that, if, on the basis of the initial inspection, the customs officer develops a "real suspicion" that they are unimportable, they may be subjected to a thorough reading (App. A at 7a). In equating the constitutional standard applicable to border reading of correspondence with that purportedly governing

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<sup>15</sup> As *Ramsey* repeatedly emphasized, the fact that the correspondence in this case arrived by air cargo rather than international mail is of no significance to the *constitutional* issues involved, for there is "no distinction in constitutional doctrine stemming from the mode of transportation across our borders . . ." 431 U.S. at 621.

<sup>16</sup> 19 U.S.C. § 1305 (*supra*, p. 5) prohibits the importation into the United States of any writing or document which is obscene or contains ". . . any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life or inflict bodily harm upon any person in the United States . . ."

searches for physical contraband,<sup>17</sup> the court below entirely disregarded a long line of this Court's decisions holding that warrantless searches of private communications intrude upon First as well as Fourth Amendment interests and thus must be tested against First as well as Fourth Amendment standards.

This Court has recognized that governmental intrusion into private communications may well conflict "with the 'uninhibited, robust and wide-open' debate and discussion that are contemplated by the First Amendment." *Lamont v. Postmaster General*, 381 U.S. 301, 307, quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270; *United States v. United States District Court*, 407 U.S. 297, 314. Thus, it has ruled that searches of domestic written expression for the purpose of determining whether it is unlawful and unprotected are not to be judged by the same constitutional standards as searches for physical contraband or evidence because of "the serious hazard of suppression of innocent expression." *Marcus v. Search Warrant*, 367 U.S. 717, 730-731; see *Roaden v. Kentucky*, 413 U.S. 494, 502, 503 n. 4; *Quantity of Copies of Books v. Kansas*, 378 U.S. 209, 211-12; *Stanford v. Texas*, 379 U.S. 476, 489 n. 18. Consequently, the Court has insisted that the Fourth Amendment warrant requirement must be accorded "scrupulous" and "particular exactitude" when "First Amendment interests would be endangered by the search", that is, where the papers to be searched "may be protected by the First Amendment." See *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 and cases there cited. Because "the values of freedom of expression" call "for a higher hurdle in the evaluation of reasonableness" under

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<sup>17</sup> Even with respect to physical contraband, the district court ignored the clear import of *Ramsey* and 19 U.S.C. § 482 that a search for contraband may proceed only if there is "reasonable cause to suspect" a customs violation. See *post*, pp. 16-17.

the Fourth Amendment, a search directed at private, domestic expression or communications requires a warrant although none would be required if the search's object were physical contraband rather than expression. *Roaden v. Kentucky*, 413 U.S. 494, 504, 506.

The question here, then, is whether these First Amendment principles requiring a warrant for domestic searches of expression are diluted when the expression originates abroad and the search is conducted at the border. The First Amendment embraces the American public's right to receive information and ideas from abroad, for the plenary power to exclude aliens and physical contraband or goods does not extend to protected expression. See *Lamont v. Postmaster General*, *supra*, 381 U.S. at 307; *Kleindienst v. Mandel*, 408 U.S. 753, 762-65. Thus intrusions on the First Amendment freedoms resulting from a warrantless search of private papers may "only be justified by a substantial governmental interest and a showing that the means chosen to effectuate the State's purpose are not unnecessarily restrictive of personal freedoms." See *Procunier v. Martinez*, 416 U.S. 396, 425.

The government has not met that test here. On the one hand, the major evil which the Fourth Amendment's warrant requirement was intended to prevent is general and indiscriminate rummaging among private papers on the basis of official discretion or whim. See, e.g., *Zurcher v. Stanford Daily*, *supra*, 437 U.S. at 564; *Stanford v. Texas*, 379 U.S. 476, 484-85; *United States v. Poller*, 63 F.2d 911, 914 (2nd Cir. 1930) (L. Hand, J.). On the other, the government claims an interest under 19 U.S.C. § 1305 in preventing entry of unprotected and unlawful expression. See *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 376. But it has not shown that its alleged interest is sufficiently compelling to justify the wholesale intrusions

upon protected expression inevitably resulting from warrantless search of private papers.<sup>19</sup> Indeed, the government does not deem warrantless reading necessary for enforcement of Section 1305 against correspondence mailed from abroad, for a postal regulation prohibits customs officers from reading letters without a warrant. No reason exists in theory, practice or policy why the government's asserted interest in preventing the importation of literary "contraband" is any greater when the documents are shipped by air cargo rather than international mail.

The Court does not have to reach the question of whether the First and Fourth Amendments require a warrant based upon probable cause for border searches of private correspondence and papers. The Court need decide only that the First and Fourth Amendments, in conjunction with 19 U.S.C. § 482, prohibit the kind of random and arbitrary perusal of such documents engaged in by customs inspectors in this case. Indeed, the Court already has held in *Ramsey* that the Fourth Amendment and 19 U.S.C. § 482 limit the authority of customs officers to search even for nonliterary contraband to situations in which there is "reasonable cause to suspect" a violation of the customs law. Surely, as *Ramsey* made clear, no lesser standard is appropriate when the search involves the reading of private papers.<sup>18</sup>

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<sup>19</sup> Customs officers may detain private papers for a reasonably short period to give them a chance to obtain a warrant. *United States v. Van Leeuwen*, 397 U.S. 249.

<sup>18</sup> Numerous courts of appeals and district courts have applied the "reasonable cause to suspect" test while upholding warrantless opening of sealed envelopes. See *United States v. King*, 517 F.2d 350 (5th Cir. 1975) (package of mail consisting of numerous card-size envelopes of unusual thickness from a small group of senders with identical overseas addresses; powdery cushion felt inside envelopes); *United States v. Milroy*, 538 F.2d 1033 (4th Cir. 1976) (five envelopes mailed from abroad on same day to same addresses; envelopes heavier than if they contained mere correspondence and

In the instant case there was not a scintilla of evidence upon which Customs Agent Hoyle could find a "reasonable cause to suspect" that customs laws would be violated by the importation of the sealed correspondence in question. His own uncontested testimony discloses no reason for his opening of the envelopes and initial reading of their contents. In fact, immediately prior to opening the envelopes, Agent Hoyle had been able visually to verify that the packages he ordered opened contained envelopes and not merchandise, consistent with the package markings. There were none of the indicia such as suspicious weight, feel, size, shape, address or markings on the envelopes which gave rise to the "reasonable cause to suspect" found in *United States v. Ramsey*, *supra*, and the cases cited in footnote 18. And once the packages were opened, Agent Hoyle could verify by sight that they contained only written papers. He had absolutely no basis for suspecting that the documents might themselves be contraband.

The three-judge district court erroneously failed to apply the "reasonable cause to suspect" test. It concluded that both the opening of the envelopes and the initial reading of the correspondence were reasonable simply because they occurred during a border search. This is in conflict with this Court's decision in *Ramsey* which applied a test of reasonable cause to suspect upon an indisputable border

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envelopes sniffed by trained dog who identified them as bearing narcotics); *United States v. Doe*, 472 F.2d 982 (2d Cir. 1972) (large package from country commonly source of drugs; label aroused suspicion with experienced customs officer); *United States v. Swede*, 326 F.Supp. 533 (S.D.N.Y. 1971) (envelope mailed from Switzerland opened after white powder escaped); *United States v. Sohnen*, 298 F.Supp. 51 (E.D.N.Y. 1951) (sealed package opened and illegally imported coins discovered after unusual weight and feel of package noted and spectroscopic examination revealed that it contained 12 disc-shaped objects); *United States v. Head*, 416 F.Supp. 840 (S.D.N.Y. 1976) (internationally mailed package of suspected drug trafficker fluoroscoped before being opened).

search. The First and Fourth Amendments and 19 U.S.C. § 482 require at least the same showing before sealed envelopes may be opened and private papers read by a customs officer.

## II

This case presents the important question of whether the detention and general search of correspondence by customs agents for evidence of *any* crimes may be deemed a "border search" exempt from the Fourth Amendment requirement of a search warrant issued upon probable cause. The border search exception, as with all exceptions to the warrant requirement, must be "jealously and carefully drawn". *Jones v. United States*, 357 U.S. 493. To sanction the instant wholesale warrantless reading of the appellants' correspondence during the course of a planned general search for evidence of criminal offenses would be a radical departure from judicial conceptions of what constitutes a border search.

Customs Agent Peel testified as to the purpose of his searches of the documents after they had been seized and removed to Terminal Island. On one occasion, he stated that the papers were read to determine if there was "evidence of crime" and at another juncture he declared that he was searching for evidence of violations of 19 U.S.C. § 1305 or "other violations of the law" (*supra*, p. 7). By his own testimony, Peel was engaged in a general law enforcement search for evidence of crimes and not a border search "related to the entry of contraband or dutiable merchandise into the United States." *Amador-Gonzalez v. United States*, 391 F.2d 308, 312 (5th Cir. 1968).

Before even formulating the "border search exception" this Court recognized the distinction between a customs search and a general law enforcement search:

The search and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him.

*Boyd v. United States*, 116 U.S. 616, 623.

Courts have remained sensitive to the difference between a border search and its narrow purpose and a general law enforcement search requiring a warrant:

The Congress has in effect declared that a search which would be "unreasonable" within the meaning of the Fourth Amendment, if conducted by public officers in the ordinary case, would be a reasonable search if conducted by *customs officials in lawful pursuit of unlawful imports*. Judicial recognition of this distinction has given rise to the term "border search" in order to distinguish official searches which are reasonable because made solely in the enforcement of customs laws from *other official searches made in connection with general law enforcement*.

*Alexander v. United States*, 362 F.2d 379, 381-382 (9th Cir. 1966) (emphasis supplied).<sup>19</sup>

It is clear that Peel searched the "private communications" in question for general evidence of crimes, and not violations of the customs laws. The fact that he *also* was looking for violations of 19 U.S.C. § 1305 did not convert his far reaching general search into a border search. Peel

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<sup>19</sup> See *United States v. Diamond*, 471 F.2d 771, 773 (9th Cir. 1973); *Klein v. United States*, 471 F.2d 847, 849 (9th Cir. 1973); *Amador-Gonzalez v. United States*, *supra*; *United States v. Swede*, *supra* at 536; *United States v. Head*, *supra* at 843; *United States v. Sohnen*, *supra* at 55.

was required by the Fourth Amendment to obtain a search warrant from a neutral and detached judicial officer, just as would any other law enforcement officer prior to conducting a search of private papers. *Katz v. United States*, 389 U.S. 347; *Terry v. Ohio*, 392 U.S. 1; *United States v. United States District Court, supra*.

Courts repeatedly have denounced "pretext" searches conducted for the purpose of evading the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443; *Kelly v. United States*, 197 F.2d 162 (5th Cir. 1952); *Corngold v. United States*, 367 F.2d 1 (9th Cir. 1966); *Amador-Gonzalez v. United States*, 391 F.2d 308 (5th Cir. 1968); *Green v. United States*, 386 F.2d 953 (10th Cir. 1967). If the three-judge court's decision is allowed to stand, it cannot help but encourage the calculated circumvention of the warrant requirement since it implies that virtually any search conducted by members of the United States Customs Service is a "border search", irrespective of its purpose.

### III

The question of whether 19 U.S.C. § 1305's proscription of the importation of writings "containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States" violates the First Amendment because it prohibits mere abstract advocacy is also novel and substantial. No court, other than the one below, has ever construed the language.<sup>20</sup>

<sup>20</sup> The Church has standing to raise this question although its papers ultimately were not seized under Section 1305, but were returned. The government has conceded that the sole basis for the reading of the Church's papers was enforcement of this portion of Section 1305. "With the statutory predicate declared

As the court below correctly concluded (App. A. at 3a), Section 1305 does not on its face meet the test enunciated in *Brandenburg v. Ohio*, 395 U.S. 444, 447-48, which held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The question, then, is whether, as the court below held (App. A at 4a), section 1305 may be construed to incorporate the *Brandenburg* standard.

The relevant principles of statutory construction are well-settled. "Although [the] Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute." *Aptheker v. United States*, 378 U.S. 500, 515. A statute may not be saved by a narrowing construction if that construction is "inconsistent with the expressed intention of some of its authors." *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 369-70. Thus a law prohibiting advocacy may be narrowly construed to meet constitutional standards if the enacting "Congress was aware of the distinction between the advocacy or teaching of abstract doctrine and the advocacy or teaching of action . . . and did not intend to disregard it." *See Yates v. United States*, 354 U.S. 298, 319; *Dennis v. United States*, 341 U.S. 494, 502.

The district court completely ignored these principles and the legislative history underlying the enactment of section 1305. The Congress which added the advocacy provision

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unconstitutional, there [would be] no legal justification for the intrusion" into the papers. *McSurely v. McClellan*, 553 F.2d 1277, 1291-92 (D.C. Cir. 1976) (en banc); cf. *Powell v. Stone*, 507 F.2d 93 (9th Cir. 1974), *rev'd on other grounds*, 428 U.S. 465.

to Section 1305 in 1930 explicitly intended that it embrace abstract advocacy. The House reported that the statute was drawn "in conformity with the present provisions of the postal laws" and was intended to prohibit "books, pamphlets and other matters of a seditious or anarchistic nature." *H.R. Rep. No. 7*, 71st Cong., 1st Sess. at 160. The postal law from which section 1305 was derived (then codified as 18 U.S.C. § 344) was identical in terms to the new statute, and in fact was a verbatim recodification of Title 12, section 2 of the Espionage Act of 1917 (40 Stat. 217).<sup>21</sup> The latter section had been definitively construed by this Court and by the United States Court of Appeals for the Second Circuit to authorize the Postmaster General or his agents to prohibit the mailing of material merely advocating sedition, treason or violation of United States law, irrespective of the likelihood that such advocacy would incite imminent lawless action. *United States ex rel. Milwaukee Social Democrat Pub. Co. v. Burleson*, 255 U.S. 407; *Masses Publishing Co. v. Patten*, 246 F. 2d (2d Cir. 1918).<sup>22</sup> See Chafee, *Free Speech in the United States*, 42-49, 298-305 (1941). Indeed, the Court in *Burleson* upheld the Postmaster General in barring from the mails written material merely criticising laws and government policy, on the ground that such criticism *impliedly* advocated civil disobedience. 255 U.S. at 414-415; see Chafee, *supra* at 303. Under the aegis of the Act, the Postmaster General engaged in probably the broadest and most stringent censorship campaign in this nation's history. See Chafee, *supra* at 98-99 for a brief description of that effort and of the nature of the materials

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<sup>21</sup> The statute is now codified as 18 U.S.C. § 1717.

<sup>22</sup> Indeed, the Second Circuit in *Masses* reversed an injunctive order issued by then-District Judge Learned Hand. Judge Hand had held that the Postmaster General could prohibit mailing only of material constituting a "direct incitement to violent resistance." 244 F. 535, 540 (S.D.N.Y. 1917).

barred from the postal system. The use of the statute to prohibit the mailing of abstract written advocacy continued at least until after enactment of the advocacy provision of 19 U.S.C. § 1305 in 1930. See *Gitlow v. Kieley*, 44 F.2d 227 (S.D.N.Y. 1930). This contemporaneous construction and enforcement of the very statute upon which section 1305 explicitly was modelled manifests the intent of the enacting Congress<sup>23</sup>

The Senate debates confirm that the 1930 Congress intended to proscribe the importation of abstract advocacy documents. The bill's supporters claimed that enactment was necessary to bar the entry of "dangerous European or foreign ideas," "socialistic and communistic literature," opposition to the American form of government, and "seditious garbage." 82 Cong. Rec. 5487-5520.

Thus it is clear that the district court did not construe section 1305 in accordance with the meaning of the enacting Congress, but rather rewrote the statute contrary to the Congress' express intent. But "it is for Congress, not the Court, to rewrite the statute". *Blount v. Rizzi*, 400 U.S. 410, 419. The decision of the district court on the substantial federal question of statutory construction and constitutional law must be reversed.

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<sup>23</sup> The general constitutional doctrine of the time was in accord. Only three years before the enactment of section 1305, the Court had decided *Whitney v. California*, 274 U.S. 357, which upheld a statute making unlawful the abstract advocacy of political and economic change.

## IV

Finally, the Court must decide whether Section 1305 is unconstitutional on its face and as applied in this case for authorizing the prior restraint of nonobscene written advocacy without a warrant or an immediate subsequent judicial determination that the papers are not constitutionally protected. While this Court has allowed prior restraint of obscenity under strict procedural safeguards, e.g., *Freedman v. Maryland*, 380 U.S. 51, it has held that prior restraint of other expression is valid only if it threatens to bring about an extraordinary public danger and only if the threat is inevitable, direct and imminent. See *Near v. Minnesota ex rel. Olson*, 283 U.S. 697; *New York Times Co. v. United States*, 403 U.S. 713. But no court has ever held that written advocacy of lawlessness creates a danger so great that it may be subjected to a prior restraint. Those cases which envision the possibility that writings may be subjected to prior restraint contemplate the publication not of advocacy of lawlessness, but of *true information* which will inevitably result in great public disaster, such as the revelation in time of war of the sailing dates of transports or the number and location of troops. See *Near v. Minnesota ex rel. Olson*, *supra*, 283 U.S. at 716.

Section 1305 contemplates that such advocacy, standing alone, will create a danger sufficient to justify the prior restraint. But that assumption is clearly incorrect as a matter of law. Indeed, one cannot reasonably imagine a writing which would meet the constitutional standard for subsequent punishment of speech, one so forceful and compelling as to be likely to produce imminent lawless action among its readers. Compare, e.g., *Hess v. Indiana*, 414 U.S. 105 (per curiam). Moreover, as a prior restraint, section 1305 precludes an accurate determination of the likely effect

written advocacy will have on its audience. In the absence of concrete evidence of the effect of the advocacy, the government is left with mere anticipation, speculation and conjecture about its inciting effects, and that is a constitutionally impermissible basis for limiting expression. See *Police Department v. Mosley*, 408 U.S. 92, 100-01; *Healy v. James*, 408 U.S. 169, 188-91; *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 508.

The constitutional infirmity of section 1305 is heightened by the fact that the decision whether or not to exercise a prior restraint on speech is made not by a judge or magistrate, but by a customs inspector. When expression is subjected to restraint for reasons other than its alleged obscenity, it must be preceded by a judicial examination of the material and an adversary determination that it is not constitutionally protected. See *Zurcher v. Stanford Daily*, 436 U.S. 547, 564; *Roaden v. Kentucky*, 413 U.S. 496, 503-506; *Carroll v. Presidents & Commissioners of Princess Anne*, 393 U.S. 175, 183 and n. 10; cf. *Speiser v. Randall*, 357 U.S. 513. Even temporary restraint of nonobscene expression without judicial resolution of its constitutional status is invalid. E.g., *Organization for a Better Austin v. Keefe*, 402 U.S. 415.

Section 1305 contains no time limits for a judicial resolution. In *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 373-74, however, the Court construed the section "to require intervals of no more than 14 days from seizure of the goods to the institution of judicial proceedings for their forfeiture and no longer than 60 days from the filing of the action to final decision in the district court." But *Thirty-Seven Photographs* dealt with seizure of allegedly obscene materials, and the First Amendment requires only prompt post-seizure judicial review of the status of such speech. E.g., *Freedman v. Maryland*, 380 U.S. 51. Seizure

of writings on grounds other than obscenity requires an advance adversary judicial hearing because, “[i]t is vital to the operation of democratic government that the citizens have facts and ideas on important issues before them,” and “[a] delay of even a day or two may be of crucial importance in some instances.” *Carroll v. Princess Anne*, *supra*, 393 U.S. at 182. Section 1305 may not be construed to require an advance judicial hearing and determination with respect to its advocacy prohibition because it explicitly contemplates only a post-seizure court proceeding. See *Blount v. Rizzi*, 400 U.S. 410, as explained in *United States v. Thirty-Seven Photographs*, *supra*, 402 U.S. at 369-70.

The court below rejected these contentions because the Church’s papers “were detained for a very short period [10 days] by the Customs Service” and “this temporary delay and retention of documents do not constitute a constitutional deprivation” (App. A at 4a-5a). But as *Carroll* held, even a day or two delay may be critical in the receipt of information and ideas. Indeed, in the present case the detained papers were one-of-a-kind and critical to the Church’s operations. Moreover, Section 1305 is facially invalid for failure to provide for an advance judicial determination of the constitutionality of advocacy, and not merely because the Church’s own papers were detained for an unreasonable period.<sup>24</sup>

## CONCLUSION

For the reasons stated, the Court should note probable jurisdiction.

Respectfully submitted,

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January 26, 1979

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<sup>24</sup> As we have seen, the Church has standing to make this facial challenge because the search of its papers was based on Section 1305’s advocacy prohibition, and if that provision is facially invalid, then the search was also illegal.

**APPENDIX A**

**Opinion of the District Court**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CASE No. CV 76-2160-WPG

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CHURCH OF SCIENTOLOGY OF CALIFORNIA,  
on its own behalf and on behalf of its members, et al.,

*Plaintiffs,*

v.

WILLIAM SIMON,  
Secretary of the Treasury, et al.,

*Defendants.*

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**MEMORANDUM OF DECISION**

Before:

BARNES, *Circuit Judge* and  
GRAY and FERGUSON, *District Judges.*

GRAY, *District Judge:*

This three-judge court was convened to consider the constitutionality of 19 U.S.C. § 1305,<sup>1</sup> which prohibits the admission into the United States of several categories of documents and articles, including any writing or document that is obscene or contains:

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<sup>1</sup> A three-judge court was convened because the plaintiffs seek to restrain certain customs searches and seizures permitted by that statute. In all actions filed prior to August 12, 1976, that seek to enjoin enforcement of a statute, adjudication by a three-judge court is proper. 28 U.S.C. §§ 2281 *et seq.* The instant suit was filed on July 7, 1976.

*Appendix A—Opinion of the District Court*

"... any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life or inflict bodily harm upon any person in the United States . . . ."

Under the authority of this statute, the United States Customs Service searches materials entering this country from abroad. The plaintiffs filed suit to enjoin the enforcement of this statute and to prohibit the customs officers from searching documents without obtaining a search warrant.

The relevant facts in the instant case are fairly straight forward. Four cartons of papers and documents were shipped from England, via international air cargo, to Church of Scientology employees in Los Angeles County. On July 3, 1976, the Customs Inspector on duty at Los Angeles International Airport opened the cartons, briefly scanned the documents, expressed uncertainty regarding the importability of the materials, and detained the cartons for further review of their contents.

Subsequently, special customs agents more carefully reviewed the documents and, on July 7, 1976, the District Directors of Customs concluded that the contents were importable. On that same day, the Church of Scientology filed suit for damages and injunctive relief and, on July 13, 1976, the cartons of documents were released to the plaintiffs.

A temporary restraining order issued in this case enjoined the Customs Service from copying or disseminating copies of any of the documents contained in the cartons. The Customs Service was permitted, however, to disclose the materials to the United States Attorney, who could

*Appendix A—Opinion of the District Court*

make one copy of documents he found appropriate for criminal evidentiary purposes or for defense of any damage claims that the plaintiffs might assert.

The plaintiffs raise several arguments in support of their claims for injunctive relief. First, they contend that Section 1305 is facially unconstitutional. Second, the plaintiffs urge that even if the statute is deemed constitutional, the method of enforcement in the instant case was improper. The plaintiffs take the position that a warrant was required initially to read the private, noncommercial documents shipped from abroad. Finally, the plaintiffs contend that once the Customs Service deemed the documents to be importable under Section 1305, its agents could not continue to read, detain, copy or disseminate copies of their documents without a warrant. We are unpersuaded by these arguments within the context of the facts of this case and we accordingly deny the request for an injunction.

CONSTITUTIONALITY OF 19 U.S.C. § 1305

The Church of Scientology asserts that Section 1305 is overbroad, a prior restraint on speech, and void for vagueness. We disagree with these arguments, and hold that the statute is constitutional when properly construed and applied.

The plaintiffs insist that the statute is unconstitutionally overbroad, for it prohibits the importation of written materials that discuss violence as an abstract doctrine, as well as "action now" materials. It is obvious that the statute does not incorporate specifically the restrictions set forth in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), which held that a state cannot proscribe advocacy of the use of force "... except where such advocacy is directed to incit-

*Appendix A—Opinion of the District Court*

ing or producing imminent lawless action and is likely to incite or produce such action." 395 U.S. at 494. Nonetheless, we read such standards into Section 1305 in order to uphold its constitutionality. In doing so, we follow the example set by the Supreme Court in *United States v. Thirty-Seven Photographs*, 402 U.S. 363 (1971) and in *United States v. 12 200-Ft. Reels*, 413 U.S. 123 (1972).

In *Thirty-Seven Photographs*, the Supreme Court applied constitutional standards to uphold the statute's validity. The plaintiffs in that case had argued that Section 1305 was unconstitutional in that it failed to specify procedural time limits for judicial determination of obscenity as required by the First Amendment. Rather than invalidate the statute based on this lack of an express standard, the Court adhered to the ". . . cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." 402 U.S. at 369. Similarly, in *12 200-Ft. Reels, supra*, the Court foreclosed an overbreadth attack, although the statute prohibited the importation of obscene materials both for private use and possession, as well as for commercial use.

In accordance with these decisions upholding the constitutionality of 19 U.S.C. § 1305, we interpret the "advocacy" section of that statute in a manner consistent with the Constitution. Thus, we will "read in" the standards set forth in *Brandenburg v. Ohio, supra*, and construe the statute to avoid the overbreadth attack.

We also reject the plaintiffs' argument that the statute permits an unconstitutional prior restraint of speech through the detention of imported materials. In this case, the Church of Scientology's papers, which consisted of many thousands of pages, were detained for a very short

*Appendix A—Opinion of the District Court*

period by the Customs Service, before the Service determined the papers to be importable. Under the Customs Service's broad powers to restrict imports and conduct a search of materials entering the country from abroad, this temporary delay and retention of documents do not constitute a constitutional deprivation.

Finally, the plaintiffs' argument that the statute is void for vagueness must also fail. This contention relates to the scope of discretion afforded the Secretary of the Treasury to admit books of recognized literary or scientific merit. The question of an improper exercise of this discretionary power is not presented by the facts of this case, and so we need not resolve it within this decision. Thus, we hold that the statute is constitutional as applied to advocacy issues, just as it previously has been held constitutional as applied to obscenity issues.

ENFORCEMENT OF 19 U.S.C. § 1305

We also hold that the search pursuant to the statute was conducted in a constitutionally valid manner. The plaintiffs argue unsuccessfully that warrantless reading of materials entering the United States from abroad is suspect. We disagree with their contentions that a warrant was needed for the original inspection and that a warrant was required once the documents were deemed importable pursuant to § 1305.<sup>2</sup>

It is indisputable that the instant case involves a border search. The Customs Service has the statutory authority

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<sup>2</sup> Complaints regarding allegedly unlawful operation or administration of a statute normally are not the proper subject of adjudication by a three-judge court under the standards set forth in 28 U.S.C. §§ 2281 *et seq.* However, in the interests of judicial economy, we may exercise our discretion to resolve pendent statutory claims, and we do so here. See, *Rosado v. Wyman*, 397 U.S. 397 (1970).

*Appendix A—Opinion of the District Court*

to examine materials coming into the United States, and the Supreme Court has enunciated clearly the position that the government possesses an inherent right to protect itself by stopping and examining persons and property entering the country from abroad. *United States v. Ramsey*, 431 U.S. 606 (1977).

In addition, the Constitution has given Congress broad, comprehensive powers to regulate commerce with foreign nations, and under this power “[i]mport restrictions and searches of persons or packages at the national borders” are justified by different “considerations and different rules of constitutional law from domestic regulations.” *United States v. 12 200-Ft. Reels*, 413 U.S. 123, 125 (1972).

Under its general powers in setting import restrictions, Congress may promulgate regulations regarding the importability of obscene material and material advocating the overthrow of the government. To enforce these regulations, the Customs Service has the right to search luggage and persons at our national borders. This search necessarily involves the examination or review of the materials in question, for the customs officers must scan or peruse and perhaps even read the materials to determine whether or not they are importable.

The Supreme Court recently reconsidered the standards and requirements for border searches in *United States v. Ramsey*, 431 U.S. 606 (1977). The Court reaffirmed the policy that border searches without probable cause and without a warrant are reasonable. In that case, the customs officials opened letter size envelopes arriving airmail from Thailand which they reasonably suspected contained illegally imported narcotics. The Court concluded that mail entering the country from overseas was not entitled to any

*Appendix A—Opinion of the District Court*

greater privacy than material coming from abroad by any other mode of entry.

In line with the reasoning set forth in *Ramsey*, the search involved here must be measured against the normal border search standards. The Court did leave open the question, however, of when a border search might be unreasonable and “particularly offensive.” 431 U.S. at 618. However, it would be inappropriate and unnecessary for this court to determine what is reasonable under all circumstances, or what type of search would be unreasonable. It is sufficient that in this case the search was reasonable and complied with the more stringent border search test promulgated by the Ninth Circuit, in *United States v. Wilmot*, 563 F.2d 1298 (9th Cir. 1977). In that decision, the opinion cites *Ramsey* for the well-established principle that border searches “are reasonable simply by virtue of the fact that they occur at the border.” It then stated that in order to justify an intrusive search, additional cause is necessary, and held that for a strip search “there must be ‘real suspicion’ directed specifically to the person searched.” 563 F.2d at 1300.

The instant case withstands analysis under the Ninth Circuit’s “real suspicion” test. The initial search, simply as a border search, was reasonable. It appears that the customs officer developed a “real suspicion” as to the importability of the contents of the cartons as a result of this initial search. We conclude that the customs officer’s real suspicion concerning the importability of the documents fulfilled the additional cause requirement, and provided the basis for the more intrusive search that subsequently took place. Thus, the actions of the customs officers were proper and the enforcement of the border search was valid.

Finally, we reject the plaintiffs’ argument that the gov-

*Appendix A—Opinion of the District Court*

ernment had to obtain a search warrant to continue searching, detaining and copying the documents. The plain view doctrine provides that an officer may seize evidence without a warrant if that officer has a proper justification for being coincidentally in a position to come upon the incriminating evidence. *Harris v. United States*, 390 U.S. 234 (1968).

The plaintiffs have neither argued nor presented any credible evidence in this case that the original inspection of the documents was conducted in bad faith or that the initial Section 1305 search was used as a guise for obtaining incriminating evidence for use against the Church of Scientology in other proceedings. Accordingly, we must conclude that the initial search was conducted in good faith and a proper inspection occurred.

The customs officers had a right to inspect the shipments and could seize any evidence of another crime, under the plain view doctrine, without first obtaining a search warrant. This conclusion regarding the permissible absence of a search warrant is buttressed by the Supreme Court's comment in *Ramsey, supra*. In *Ramsey*, the customs officials opened the airmail envelopes, discovered the heroin, resealed the envelopes and sent them to the Drug Enforcement Administration for further action. The Drug Enforcement Administration obtained search warrants after it received the envelopes. The Supreme Court treated the search warrants as an unnecessary and insignificant step, for the original opening and inspection of the envelopes had been legal. We hold, similarly, that a search warrant would be unnecessary, for the customs officers already were examining the documents in good faith and therefore the plain view doctrine is controlling.

For the foregoing reasons, the plaintiffs' application for a preliminary injunction will be denied and the action dis-

*Appendix A—Opinion of the District Court*

missed. This opinion shall constitute findings of fact and conclusions of law, as authorized by Rule 52(a) of the Federal Rules of Civil Procedure.

Dated: October 13, 1978.

/s/ WILLIAM P. GRAY

WILLIAM P. GRAY

*United States District Judge*

We concur.

/s/ STANLEY N. BARNES

STANLEY N. BARNES

*United States Circuit Judge*

/s/ WARREN J. FERGUSON

WARREN J. FERGUSON

*United States District Judge*

**APPENDIX B**  
**Judgment of the District Court**

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 CASE No. CV 76-2160-WPG

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CHURCH OF SCIENTOLOGY OF CALIFORNIA,  
 on its own behalf and on behalf of its members, et al.,

*Plaintiffs,*

v.

WILLIAM SIMON,  
 Secretary of the Treasury, et al.,

*Defendants.*

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For the reasons set forth in the Memorandum of Decision  
 filed contemporaneously herewith,

IT IS ORDERED that the plaintiffs' petition for a preliminary injunction is denied and the action dismissed.

DATED: October 13, 1978

/s/ STANLEY N. BARNES  
 STANLEY N. BARNES,  
 Circuit Judge

/s/ WILLIAM P. GRAY  
 WILLIAM P. GRAY,  
 District Judge

/s/ WARREN J. FERGUSON  
 WARREN J. FERGUSON,  
 District Judge

**APPENDIX C**  
**Notice of Appeal**

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 CASE No. CV 76-2160-WPG

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CHURCH OF SCIENTOLOGY OF CALIFORNIA,  
 on its own behalf and on behalf of its members,

DAVID W. JAMES, KENNETH WHITMAN,

*Plaintiffs,*

v.

WILLIAM SIMON,  
 Secretary of the Treasury, et al.,

*Defendants.*

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NOTICE IS HEREBY GIVEN that the Church of Scientology of California, David W. James and Kenneth Whitman, the Plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the final order, entered in this case on October 13, 1978, denying their petition for a preliminary injunction and dismissing the action.

This Appeal is taken pursuant to 28 U.S.C. §1253.

Respectfully submitted,

LEONARD B. BOUDIN  
 H. PETER YOUNG  
 By: /s/

H. Peter Young  
*Attorneys for the Plaintiffs*

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